UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MACHELLE SILVA, Plaintiff, vs. SOCIAL SECURITY ADMINISTRATION Defendant.	CASE NO. 08-CV-1408-H (LSP) ORDER: (1) DISMISSING COMPLAINT WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM, WITH LEAVE TO AMEND (2) DENYING WITHOUT PREJUDICE MOTION FOR APPOINTMENT OF COUNSEL (3) DENYING WITHOUT PREJUDICE MOTION TO PROCEED IN FORMA PAUPERIS

On August 4, 2008, plaintiff Machelle Silva ("Plaintiff") submitted a civil complaint against the Social Security Administration along with a motion to proceed in forma pauperis ("IFP") and a motion to appoint counsel under 42 U.S.C. § 2000e-5(f)(1). (Doc. Nos. 1-3.) For the reasons discussed below, the Court dismisses the complaint for failure to state a claim, with leave to amend. The Court denies the motion to proceed in forma pauperis without prejudice. The Court denies the request for appointment of counsel without prejudice.

Discussion

I. Sua Sponte Screening of IFP Complaint

Under 28 U.S.C. § 1915(e)(2), the Court may dismiss an IFP complaint sua sponte if the complaint is frivolous, malicious, or fails to state a claim. Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[S]ection 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint that fails to state a claim."). "[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000) (discussing similar provision of 28 U.S.C. § 1915A); Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) "parallels the language of Federal Rule of Civil Procedure 12(b)(6)"). Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal of a claim either where the claim lacks a cognizable legal theory, or where plaintiff has not alleged facts sufficient to support the claim. See Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). A complaint must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, ___ U.S. ___, 127 S.Ct. 1955, 1965 (2007).

Plaintiff's complaint indicates a claim for "personal injury". The complaint does not set forth any facts in support of this claim, making only conclusory references to "motor vehicle personal injury, bodily harm." (See Doc. No. 1.) Therefore, the Court dismisses the complaint without prejudice for failure to state a claim.

If a complaint fails to state a claim, courts generally grant leave to amend unless the pleading could not possibly be cured by the allegation of other facts. See Doe v. United States, 58 F.3d 494, 497 (9th Cir.1995) As a result, the Court will provide Plaintiff with an opportunity to amend the pleadings.

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II. Motion for Appointment of Counsel

Plaintiff has submitted a form motion for appointment of counsel under 42 U.S.C. § 2000e-5(f)(1). Title 42 U.S.C. § 2000e-5 generally relates to procedures for bringing allegations of unlawful employment practices to the EEOC, and subsequent court review. It is unclear whether Plaintiff alleges an unlawful employment practice, let alone one properly brought before the EEOC. Furthermore, the Court is not persuaded that appointment of counsel is necessary at this time. Therefore, the Court denies the request without prejudice.

III. Motion to Proceed IFP

Since the Court has dismissed the complaint on its initial screening, the Court declines to grant leave to proceed IFP at this time. The Court denies the motion to proceed IFP without prejudice.

Conclusion

The Court dismisses the complaint without prejudice for failure to state a claim, denies the motion to proceed IFP without prejudice, and denies the motion to appoint counsel without prejudice. Plaintiff may submit an amended complaint, consistent with this order, within **45 days** of the date this order is signed. Plaintiff may also submit new requests to proceed IFP and for appointment of counsel.

IT IS SO ORDERED.

DATED: August 8, 2008

Marilyn L. Huff

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

COPIES TO:
All parties of record.